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Public interest or Hawaiian rights?

By Davianna McGregor-Alegado

On May 30, 1984 the U.S. Supreme Court upheld Hawaii's Land Reform Act, overturning a lower court ruling that had declared it unconstitutional. Implementation of the 1967 act is now pitting 13,000 Hawaii leaseholders, the majority of whom are haole or Asian, against the Princess Bernice Pauahi Bishop Estate and the 174,453 Hawaiian beneficiaries that it was established to serve. The controversy will grow during the 1985 legislative session when the Bishop Estate, with the support of native Hawaiian community organizations, seeks to amend the act.

The reaction of many progressives to the Land Reform Act controversy ranges from ambivalence to support of the act, which will break up large landed estates in Hawaii. Support is rooted in the objective need for genuine land reform in Hawaii and the often irresponsible management of the estate by its trustees.

The 1967 Land Reform Act pits Haole and Asian leaseholders against the Bishop Estate's Hawaiian beneficiaries.

While these concerns are valid, it does not override the fact that the land reform will have severe, disastrous and irreversible political and economic ramifications for the native Hawaii people. Basically, the issue breaks down to two positions. One can support the breakup of the Bishop Estate, a land-based charitable trust set up for the education of native Hawaiians, so that a privileged few, who earn a median income of \$42,000 or more a year and own their homes, can also purchase the land upon which their homes sit. Or one can support the efforts of native Hawaiians to hold on to and protect the legacy bequeathed to them from the Kamehameha dynasty so that the immense resources of the Bishop Estate can be used for the educational advancement of their youth who make up 21.2 percent of Hawaii's student population.

The Hawaii Land Reform Act was passed in 1967 in response to a land and housing crisis. The severity of the crisis became evident in the 1970's when numerous struggles were organized to fight for decent low-income housing and long-term agricultural leases. The first of these struggles was in Kalama Valley in 1970 followed by those of the Ota Camp, Waimanalo Village, Waiahole-Waikane, and Chinatown. A major indicator of the crisis was a 1970 study on housing conducted by the Lieutenant Governor's office which found that 80 percent of Hawaii's people were priced out of the housing market, meaning only 20 percent of Hawaii's people could afford to buy a home on leasehold or fee simple land.

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The spiraling cost of land and housing was attributed to the high concentration of landholdings in Hawaii combined with an expanded market for high-priced homes due

the state owned 38.7 percent of Hawaii's land (1,590,532 acres); the federal government owned 9.8 percent (402,084 acres); and 39 major landowners owned 45 percent (1,855,923) acres. This left only 6.3 percent of Hawaii's land (257,059 acres) in the hands of small private landowners. The state Legislature concluded in 1975 that the monopoly of private landholdings in Hawaii resulted "in an artificial inflation of residential land values in the State." Certainly, genuine land reform was needed to alleviate the land and housing crisis.

To curtail the spiraling inflation in land

selling or renting their houses at a higher price for personal profit in order to curb inflation. Already leaseholders who had acquired fee simple title to their lots under the act have sold their homes at significant profit. In Kahala, for example, 23 out of 25 sales of leasehold land converted to fee simple yielded an average profit of \$126,000 for landowners. Due to the forced conversion law the large estates have already indicated their reluctance to develop any more of their land for residential use, thus intensifying instead of relieving the shortage of land for housing.



values and satisfy demands to break up the monopoly of landholdings so that leaseholders could buy their lots fee simple, the state Legislature passed the Hawaii Land Reform Act. Under the law, the state through the Hawaii Housing Authority (HHA) could use its power of eminent domain to condemn the residential lots of the lessees and transfer title to them. The Legislature stated, "Changing present patterns of land ownership by allowing lessees under long-term leases of residential land to purchase in fee simple...will help satisfy the pressing public necessity for a secure, strong and stable economy." While the Legislature can be commended for their effort to breakup the land monopoly in Hawaii and their attempt to resolve the land and housing crisis, the negative affects of the act cannot be overlooked.

The stated purposes of the act were to curb inflation, to increase the supply and lower the price of housing, and to assist "persons unable to maintain a standard of living compatible with decency and health."

Since only 20 percent of Hawaii's people could afford to buy a house in the past decades, it is clear that the act will benefit the relatively affluent in Hawaii -- those who earn incomes of \$42,000 or more. The majority of Hawaii's people will not benefit from the leasehold conversions. The result is typical of land reform programs attempted under the confines of a capitalist market economy. The act merely transfers land from a few large private landowners into the hands of a few more small private landowners for their private use and benefit. There is little "public interest" involved!

Moreover, the non-charitable private land estates such as Campbell Estate and Castle Estate have made windfall profits from the conversion of their lands from residential to fee simple, because the Land Reform Act exempted the estates from paying the usual capital gains tax that the normal sale of residential lots would have required. In their case the act helped them to get rid of low-yielding

charitable trust established solely for the education of native Hawaii youth, it is already a tax exempt institution.

While the trustees are definitely interested in selling the low revenue residential lands so they can invest in higher revenue ventures, they want to do so at their discretion and be able to negotiate sales at the fair market value. In a trial for the conversion of lots in Hawaii Kai's Kamiloiki Valley the estate was only granted 13 percent of the land value per lot. If the remaining 12,100 single-family residential leases are converted at 13 percent, the Kamehameha Schools/Bishop Estate will lose \$300 million.

Many people, including Hawaiians, are critical of the trustees and their land and educational policies. The five trustees collectively earn \$1.2 million a year for work that many feel could be performed more competently for a fraction of that amount. They spend another \$1 million

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annually on lawyers' fees. The estate educates less than one percent of the state's 42,000 Hawaiian youth and turns down nine out of ten applicants to the Kamehameha Schools.

The landholdings of the Bishop Estate comprising 8.5 percent of Hawaii's land is valued at \$2.3 billion. However, the estate earns only \$46.5 million annually, less than 2 percent of the total value. One major reason for the low return on the estate's assets is the residential leaseholdings. These yield a low return because (1) the leases are long-term and fixed for 20 to 30 years while the value of the land rises steadily; (2) because some of the leases were issued when 3 percent was considered to be a good rate of return; (3) because lands in areas covered by development agreements yielded a low rate of return in the early years of the lease; and (4) because in some agreements the developers were allowed to collect 50 to 95 percent of the lease rent.

In many cases the trustees actually allowed the developers to make huge profits from the leasehold land while the Bishop Estate got nothing. In Enchanted Lakes, Joe Pao and Michael Scarfone, who had the master leases, made multiple assignments at huge profits to companies they owned, without any payment to the estate. Pao and Scarfone also collected 95 percent of the lease rentals for the first 25 years. In Hawaii Kai and Pearl Harbor Heights the trustees gave the developers 50 to 95 percent of the lease rentals for 25 years.

Having sold its lands, the Lunalilo Estate today generates barely enough income to support 50 aged Hawaiians.

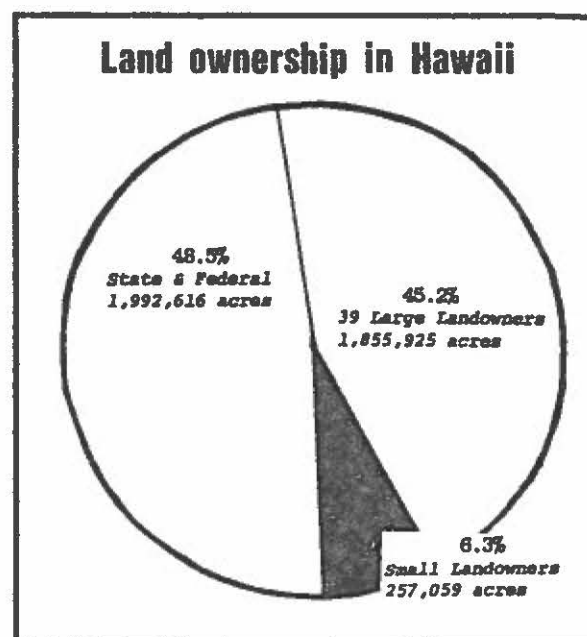
In Alii Shores, Crown Terrace and Haiku Plantations the developers retained 70 percent of the lease rents amounting to \$700,000 annually for a total of \$17.5 million over 25 years. The trustees were also criticized for allowing American Factors (AmFac) and Joe Pao's Hawaiian Pacific Industries to transfer the development rights to Pearl Harbor Heights five times for millions of dollars over ten years without a penny going to the Bishop Estate.

In the controversial Troy Post deal the trustees sold land in Keauhou at only one-third its value. When Atherton Richards sued his fellow trustees over the deal, Judge Fukushima dissolved the agreement between the Bishop Estate and Troy Post. In his concluding remarks, Fukushima said, "The majority of trustees would serve the

Bishop Estate and the Kamehameha Schools by giving serious consideration to relinquishing their offices as trustees as soon as expeditiously possible."

Ironically, now that the unequal leaseholding and developers agreements are expiring, and the lease rental can be renegotiated so that the estate can get back its fair share of the land value, the estate is faced with forced leasehold conversion.

Prior to 1970 the trustees were also criticized for educational policies which admitted only the "cream of the crop" -- or the top one percent -- of the applicants and provided curriculum geared primarily toward manual training or homemaking with little Hawaiian culture or language instruction.



Through the course of the 1970's the trustees have dramatically upgraded and expanded the educational programs of the estate. The curriculum at the high school is college-preparatory, and Hawaiian culture and language instruction is integrated at various grade levels. The estate instituted a lottery system as part of its admission policy to avoid discrimination in selection. Now the students in the various programs offered by the Kamehameha Schools vary from the alienated to the gifted.

The estate must still turn down nine out of every 10 applicants to the Kamehameha Schools where it educates 2,010 full-time students for \$15.4 million a year. However, it also has 27 extension education programs that educate 60 full-time students and 7,289 part-time students and reaches 27,000 others for a cost of \$5.3 million. The estate also has a center for early education which educates 800 full-time and 1,820 part-time students for \$9.4 million. In addition, the estate spends \$12 million (40 percent of its educational budget) on programs to improve public education in conjunction with the Department of Education. While these programs are aimed at the 33,000 Hawaiian youth in public schools, they also benefit all children in Hawaii's schools.

If the current conversion rate of only 13 percent is extended to the remaining 12,100 residential leaseholds, the Bishop Estate estimates its income will not match projected budget requirements by 1990. To make up for this deficit, programs will have to be cut, tuition raised, or money borrowed to finance deficit spending.

Community Affairs Director Neil Hannahs says, "Choices will have to be made. Is the Kamehameha Early Education Program going to continue so that all Hawaiian children can develop a sound foundation of reading skills upon which they can build success in all areas of education? Should

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preschool programs be eliminated? Should enrollment be reduced in the campus program which even now can only accept one of every ten applicants? Should the purchase of new educational technology such as computers be delayed or abandoned? Or should the Schools/Estate terminate its extension services to alienated youth enrolled in public schools?" None of the choices are acceptable. It is unconscionable that native Hawaiians should be faced with choices regarding one of the few remaining land bases established for them as a people.

In the 1985 Legislature, the Bishop Estate, with the support of its alumni association and the Council of Hawaiian Organizations, will mount an aggressive campaign to correct the worst aspects of the Hawaii Land Reform Act. They will also attempt to amend the law which provides for lease-rent control. These amendments, which will make the laws more consistent and fair, include: (1) requiring the HHA to conduct an independent appraisal for the condemned tracks; (2) reimbursing the estate for expenses incurred if lessees choose not to buy property after it has been properly designated; and (3) giving the Bishop Estate right of first refusal should the lessee choose to resell the property within ten years of the condemnation purchase.

These amendments are essential in order to guarantee a minimal level of protection to the estate's holdings under the current laws. However, many feel (and I agree) that they are not enough to protect the legacy of Bishop Estate and the native Hawaiian people. As a charitable trust established for the benefit of native Hawaiians, the estate holdings should be fully protected by being exempt from the provisions of the law. Certainly Hawaii's "public interest" will be better served by keeping the Bishop Estate's landholdings intact so that it can continue to educate native Hawaiians rather than to breaking up the estate so that a privileged minority can become private landowners.

In the interest of the native Hawaiian people, the Bishop Estate should be exempted altogether from the law.

Progressives and native Hawaiians should go beyond support of the trustees' conservative position of seeking only amendments. Their position is rooted in the narrow view of protecting the rights of large private property owners from a populist onslaught. Complete exemption of the Bishop Estate lands from forced conversion of leasehold to fee simple should be sought. This is the only guarantee of native Hawaiians' basic right to use the Princess Bernice Pauahi Bishop Estate lands for the education of their youth. We can look at what happened to the Lunalilo Estate whose landholdings once rivaled that of the Bishop Estate. At the turn of the century its trustees sold its lands and invested in stocks and bonds. Today the Lunalilo Estate generates barely enough income to maintain the Lunalilo Home for 50 aged Hawaiians. The lesson from that experience is clear: DO NOT ALLOW THE LAND TO BE SOLD.

The past, unenlightened policies of the Bishop Estate trustees are reprehensible, but they can be reversed in time. Do not support the dissolution of the estate. The sale of the land could never be reversed. In the interest of the native Hawaiian people, the Hawaii Land Reform Act should be amended in the 1985 Legislative Session. Ultimately however, the estate should be exempted altogether from the provisions of the law.

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